



EMERALD ASH BORER (EAB) TREE PLANTING GRANT AGREEMENT - ATTACHMENT 1

Issued under authority of Part 5 of Act 451, P.A. 1994 as amended, and the U.S. Cooperative Forestry Assistance Act of 1978, CFDA 10.664, to provide information regarding terms and conditions of EAB Tree Planting grants. Subject to the provisions of the law and conditions herein contained.

In this Attachment, the State of Michigan, Department of Natural Resources, Forest, Mineral and Fire Management Division is referred to as the Department. Acting for the State is the Grant Officer, Lynne Boyd, referred to as the State. The Grant Supervisor is Kerry Gray.

SECTION 1. GRANT

This grant consists of the Grantee's EAB Tree Planting Grant Application (PR 4028-1), EAB Tree Planting Grant Agreement (PR 4028-4), EAB Tree Planting Grant Agreement Attachment 1 (IC 4028-3), and written and oral instructions from the Supervisor.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT

The State agrees to reimburse the Grantee for authorized expenditures as listed in the EAB Tree Planting application upon verification of actual expenditures for both the 50% federal match portion and the 50% local match portion. This sum is not to exceed the actual costs or grant award amount, whichever is less.

Request for payments may be made when the project has been completed, but must be received no later than 30 days after the grant period ends. Full payment will be made upon completion of the project and compliance with State reporting and auditing requirements. Failure to meet these deadlines may result in non-reimbursement to the Grantee.

SECTION 3. REPORTING AND AUDITING REQUIREMENTS

As well as conferring with the DNR Supervisor, the Grantee will file a final financial and program report. The reports will be submitted upon completion of the project. The reports shall specify total expenditures, broken down as to the federal portion and the Grantee's share of costs. Total expenditures will be broken down by major budget categories. Reports will be accompanied by documentation showing that the charges are for allowable purposes and that the expenditure listings are accurate and suitable for audit. In addition to the summary documentation submitted to the Department, the Grantee will keep complete financial records such that all charges, whether paid from grant funds or from the Grantee's matching funds, can be readily traced to their origins. Basic documents required to be maintained for audit include purchase orders, vouchers authorizing payments, time records for individual employees' and volunteers' hours charged to this program.

The Grantee's progress report(s) will be submitted on forms supplied by the Department. Supplementary information summarizing accomplishments will be included in narrative form.

The project and related reports are subject to audit by the Department. This may include both financial audits and site visits.

SECTION 4. ADMINISTRATION OF GRANT, CHANGES

From time to time, changes may be needed in the scope of the project and the grant. All changes must be approved by

the Grant Supervisor. Changes must be in writing and approved in advance.

SECTION 5. STANDARDS OF WORK

In determining whether or not the Grantee has performed its obligations, it is agreed and understood that the Grant Officer shall rely on the evaluation of the Supervisor. The Grant Officer or the Supervisor may issue written or oral instructions. Any instructions that affect the scope of work, price, period of performance, or any other provision of the Grant must be in accordance with specific provisions of the Grant. The Grantee agrees that the performance of the services under this Grant shall be performed to high professional standards.

SECTION 6. CANCELLATION

Cancellation of the Grant by the State may be for: (a) default by the Grantee, or (b) lack of further need for the service at the location named in the Grant. Default is defined as the failure of the Grantee to comply with any term or condition of this Grant. In case of default by the Grantee, the State may cancel the Grant immediately and procure the services from other sources. The State can make payment up to 20% of the grant award for any reimbursable, non-cancelable expenditures that have been completed to the satisfaction of the Grant Supervisor and complies with other grant requirements.

In the event the State no longer needs the service specified in the Grant due to program changes, changes in laws, rules or regulations, relocation of offices, or lack of funding, the State may cancel the Grant by giving the Grantee written notice of such cancellation thirty (30) days prior to the date of cancellation. The Grantee can request reimbursement for reasonable non-cancelable expenditures made prior to the date of the written notice of cancellation that have been completed to the satisfaction of the Grant Supervisor and complies with other grant requirements.

SECTION 7. DISPUTES

Except as otherwise provided for in this Grant, any dispute arising under this Grant which is not disposed of by agreement shall be decided by the Grant Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy to the Grantee. The decision of the Grant Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Grantee mails or otherwise furnishes to the Grant Officer a written appeal. Pending final decision of disputes, the Grantee shall proceed diligently with the performance of this Grant and in accordance with the Grant Officer's decision.

SECTION 8. OFFICIALS NOT TO BENEFIT

No member of the Legislature of the State of Michigan or any individual employed by the State shall be allowed any share or part of this Grant, or to any benefit that may arise.

SECTION 9. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure this Grant, and that he/she has not paid or agreed to pay any

company or person, other than a bona fide employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Grant. For breach or violation of this warranty, the State shall have the right to annul this Grant without liability or, in its discretion, to deduct from the Grant price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 10. INDEPENDENT CAPACITY OF GRANTEE

The parties agree that the Grantee, in the performance of this Grant, shall act in an independent capacity and not as officer, employee, or agent of the State and shall assure any and all obligations from liability that may arise out of or in connection with this grant.

SECTION 11. ASSIGNABILITY

This Grant is not assignable by the Grantee, either in whole or in part.

SECTION 12. INSPECTION AND ACCEPTANCE

Final inspection and acceptance of all work required under this Grant shall be performed by the Supervisor, the Grant Officer, or such person as he/she may duly authorize in writing.

SECTION 13. GRATUITIES

- a. The State may, by written notice to the Grantee, terminate the right of the Grantee to proceed under this Grant if it is found, after notice and hearing, by the Grant Officer or his/her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Grantee, or any agent or representative of the Grantee, to any officer or employee of the State with a view toward securing a grant or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such grant; provided that the existence of the facts upon which the Grant Officer or his/her duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.
- b. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant.

SECTION 14. DISCLOSURE OF INFORMATION, ACKNOWLEDGMENT OF PARTICIPATION

News Releases

News releases pertaining to this grant or the services, study, data, or project to which it relates will not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State.

Publication

The Grantee will not use, release, or publish any analyses, findings, results or techniques developed under this agreement, or any information derived therefrom until such analyses, findings, or techniques have been reported to the State in the manner prescribed by this agreement and have become public domain. These analyses, findings or techniques will be considered in the public domain when:

- 1) they are submitted to the State and receive positive action,

- 2) they are formally accepted by the State, or
- 3) ninety (90) days elapse after submission to the State, whichever of the three may occur first.

No material may be published which is exempt from disclosure under Public Act No. 442 of 1976 known as the "Freedom of Information Act" without express permission from the State. The Grantee will provide the State, for its review, copies of all presentations of articles being submitted for publication at least thirty (30) days in advance.

Acknowledgment of State Participation/Support and U.S. Department of Agriculture, Forest Service.

All publications or oral presentations concerning the analyses, findings, results or techniques developed under this agreement will contain an acknowledgment of the State's participation and support, unless the State requests in writing that their participation and support not be acknowledged.

All publications or oral presentations concerning the analyses, findings, results or techniques developed under this agreement will contain an acknowledgment of U.S. Department of Agriculture, Forest Service's participation and support. Furthermore, Grantee may not receive fees for any article in excess of the cost of preparation of published articles and excluding the cost of the research and compilation which was compensated under the Agreement.

Where appropriate, this credit line should be used for news releases, publications, reports, and other communications:

"This (tree planting project) was supported, in part, by a grant from the Michigan Department of Natural Resources, Forest, Mineral and Fire Management Division and the USDA Forest Service, State & Private Forestry Program."

Where appropriate, project signs or other information placards should acknowledge Department and USDA Forest Service support. Specific wording will be determined by the Grantee and Grant Supervisor.

SECTION 15. NONDISCRIMINATION

In connection with the performance of work under this Grant, the Grantee agrees as follows:

- a. In accordance with Act. No. 453, Public Acts of 1976, the Grantee agrees not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges or employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this Grant.
- b. The Grantee agrees that any and all subcontracts to this Grant, where a portion of the work set forth in this Grant is to be performed, shall contain a covenant the same as set forth in paragraph a.
- c. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight, or marital status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship.

- d. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, age, sex, height, weight, or marital status.
- e. The Grantee will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission, which may be in effect prior to the taking of bids for any individual State project.
- f. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a Grantee has not complied with the contractual obligations under this Grant, the Michigan Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the Grant found to have been violated, and/or declare the Grantee ineligible for future grants with the State of Michigan and its political and civil subdivisions, departments, and officers, including the governing boards of institutions in higher education, until the Grantee complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the Grantee is declared ineligible to grant as a granting party in future grants. In any case before the Michigan Civil Rights Commission in which cancellation of an existing grant is a possibility, the granting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
- g. The Grantee will comply with Act 220 of the Public Acts of 1976, the Michigan Handicapper's Civil Rights Act, and SECTION 504 of the Rehabilitation Act of 1973, P.L. 93-112, both of which prohibit discrimination against handicapped persons.

(other than the work itself) including the loss of use resulting therefrom, and

SECTION 16. PRICE

Prices quoted by the Grantee shall be the maximum to be charged during the Grant period; the State shall receive the benefit of any decrease in price that may occur.

SECTION 17. TAXES

The State is exempt from Federal Excise Tax, and State or Local Sales Tax. Bid prices shall not include such taxes. Exemption Certificates for Federal Excise Tax will be furnished upon request.

SECTION 18. INDEMNIFICATION

The Grantee shall indemnify and hold harmless the State, and its agents and employees, from and against all claims, damages, losses, and expenses, including but not limited to, reasonable attorneys' fees arising out of, or resulting from the contracting out of and or performance of the work, which includes all labor, material and equipment required to produce the commodity, construction, and/or service required by the Grant, provided that any such claim, damage, loss, or expense

- (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property

- (2) is caused in whole or in part, by any negligent act or omission of the Grantee, any subgrantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified.

In any and all claims against the State, or any of its agents or employees by any employee of the Grantee, any subgrantee, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Grant shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Grantee or any subgrantee under worker's compensation acts, disability benefit acts, or other employee benefits acts.

The obligations of the Grantee under this Grant shall not extend to the liability of the State, its agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of, or the failure to give directions or instructions by the State, its agents or employees.

SECTION 19. GRANTEE'S LIABILITY INSURANCE

The Grantee shall purchase and maintain such insurance as will protect him/her from claims set forth below which may arise out of, or result from, the Grantee's operations under the Grant, whether such operations be by himself/herself or by a subgrantee, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under worker's compensation, disability benefit, and other similar employee benefit act. A non-resident Grantee shall have insurance for benefits payable under Michigan's Worker's Compensation Law for any employee, resident of and hired in, Michigan; and as respects to any other employee protected by worker's compensation laws of any other state the Grantee shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employee.
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employee, subject to limits of liability of not less than \$300,000 each occurrence and, when applicable \$300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.
5. Insurance for subparagraphs 3 and 4 non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability specified or required by law, whichever is greater, and shall include contractual liability insurance as

applicable to the Grantee's obligations under the indemnification clause of this Grant.

SECTION 20. SOURCE OF FUNDS - TERMINATION

The State's payment of funds for purposes of this Grant is subject to and conditional upon the availability of funds for such purposes, being Federal and/or State funds. No commitment is made by the State to continue or expand such activities. The State may terminate this Grant immediately upon written notice to the Grantee at any time prior to the completion of this Grant if, in the opinion of the State, funding becomes unavailable for this service, such funds are restricted. In the event of termination, reimbursement of reasonable non-cancelable expenditures in accordance with SECTION 6 may be provided.

SECTION 21. FEES AND OTHER SOURCES OF FUNDING

The Grantee shall not seek nor obtain funding through fees or charges to any client receiving services for which the State reimburses the Grantee under this Grant. The Grantee guarantees that any claims made to the State under this Grant shall not be financed by any source other than the State under the terms of this Grant. If funding is received through any other source, the Grantee shall delete from Grantee billings, or shall immediately refund to the State, the total amount representing such duplication of funding.

SECTION 22. PUBLICATION - APPROVAL AND COPYRIGHT

The State and Grantee shall have co-copyright, property, and publication rights in all written or visual material or other work products developed in connection with this Grant. The Grantee shall not publish or distribute any printed or visual material relating to the services provided under this Grant without prior written permission of the State. However, it is mutually agreed that the Grantee shall have the right to publish and disseminate work products under this Grant, provided that the Grantee shall recover only costs associated with printing and mailing, and further that such publication shall contain a reference to the State as being the holder of the copyright to the work.

This provision applies to press releases and written and visual materials specifically identified in this Grant and shall not restrict the rights of the Grantee to publish in scholarly journals or to present new, basic information in any way.

SECTION 23. RECORDS AND ACCOUNTS

The Grantee shall maintain such records and accounts, including property, personnel, and financial records, as are deemed necessary by the Granting Officer to assure a proper accounting for all project funds. Such records shall be the property of the State and made available for audit purposes.

The Grantee shall install and maintain an accounting system to identify and support all expenditures billed to the State under this Grant. The accounting system must record all income and expenses for the Grantee's total program of which services provided under this Grant are a part. The accounting system, as a minimum, shall consist of a chart of accounts, cash receipts journal, cash disbursements journal, and general ledger. All expenditures and income must be supported by vouchers and receipts that detail the reason for the transaction.

The Grantee shall maintain, within the accounting system, salary and fringe benefits accounts that break out positions, hospitalization, retirement, worker's compensation, and other fringe benefits. The Grantee shall establish and maintain payroll records for all employees. The Grantee, in establishing and allocating salary and wages for employees, shall support these charges by electing to establish either:

1. An adequate appointment and workload distribution system, accompanied by monthly reviews showing the actual changes in the workload distribution of each employee (i.e., an exception reporting system); or
2. A monthly after-the-fact certification system which requires persons in supervisory positions having first-hand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system).

SECTION 24. REVIEW AND MONITORING REPORTS

The Grantee shall comply with all program and fiscal review reporting procedures, as are, or may be, established by the State in completion of monitoring and progress reports at time intervals and on forms specified by the State. Any additional reports as deemed necessary by the Supervisor shall be made and submitted by the Grantee upon request.

SECTION 25. EXAMINATION AND MAINTENANCE OF RECORDS

The Grantee shall permit the State or any of its identified agent's access to the facilities being utilized at any reasonable time to observe the operation of the program. Further, the Grantee shall retain all books, records, or other documents relevant to the Grant for six years after final payment, at his/her cost, and federal auditors and any other duly authorized by the State shall have full access to, and the right to examine and audit, any of the material during the period. If an audit is initiated prior to the expiration of the six year period, and extends part that period, all documents shall be maintained until the audit is completed. The State shall provide findings and recommendations of audits to the Grantee. The State shall adjust future payments or final payment if the findings of an audit indicate over or under payment to the Grantee in the period prior to the audit. If no payments are due and owing the Grantee, the Grantee shall immediately refund all amounts which may be due the State. The Grantee shall assure, as a condition of any sale or transfer of ownership of the Grantee agency, that the new purchasers or owners maintain the above described books, records, or other documents for any unexpired portion of the six year period after final payment under this Grant or the Grantee shall otherwise maintain the records as the State may direct. The Grantee shall, if he/she ceases business operations, maintain the records as the State may direct.

SECTION 26. COMPLIANCE WITH STATE AND FEDERAL LAWS, RULES, REGULATIONS

The Grantee will comply with all State and Federal laws, rules, regulations, policies, guidelines, and requirements.